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FEE EXEMPT – GOV'T CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

LOS ANGELES POLICE PROTECTIVE LEAGUE, Petitioner, vs. CITY OF LOS ANGELES, et al., Respondents.	CASE NO. 18STCP03495 **CITY OF LOS ANGELES' AND CHIEF MOORE'S OPPOSITION TO PETITIONER LOS ANGELES POLICE PROTECTIVE LEAGUE'S PETITION FOR WRIT OF MANDATE; ALTERNATIVE WRIT OF MANDATE; AND REQUEST FOR STAY ORDER** [Filed Concurrently with Declaration of Soraya C. Kelly and Exhibits Attached Thereto] Assigned to the Hon. James C. Chalfant Date: February 5, 2019 Time: 1:30 p.m. Dept.: 85

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I. INTRODUCTION

This Court should deny Petitioner's request for permanent writ relief. The text and purpose of the relevant statute – Senate Bill ("SB") 1421 – obligate the Los Angeles Police Department ("Department") to disclose the records specified in that law in response to a properly drafted California Public Records Act ("CPRA") request, absent an independent statutory basis to withhold those records.

In 2018, the Legislature passed and then-Governor Jerry Brown signed into law SB 1421, which went into effect January 1, 2019. SB 1421 amends Penal Code Sections 832.7 and 832.8 by expressly eliminating statutory confidentiality protections for two specified categories of peace officer personnel records and two specified categories of administrative investigation records: records concerning officer-involved shootings, serious uses of force by an officer, certain incidents of sustained sexual assault by an officer, and certain incidents of sustained dishonesty by an officer (collectively, "Specified Records").[1] (Pen. Code § 832.7(b)(1)(A)-(C).) SB 1421 provides that Specified Records "maintained" by a public agency are subject to public disclosure under the CPRA. (Pen. Code § 832.7(b)(1).) By amending Penal Code Sections 832.7 and 832.8, the Legislature sought to create greater transparency regarding incidents of serious police misconduct, officer-involved shootings, and serious uses of force. (See Los Angeles Police Protective League ("LAPPL") Petition, Ex. A at p. 2 [Section 1 (a) & (b)].)

LAPPL argues that SB 1421 should be interpreted to apply only "prospectively" to Specified Records concerning incidents occurring on or after January 1, 2019, and that a "retroactive" disclosure of existing records maintained by the Department violates LAPPL members' privacy rights.

The most reasonable interpretation of SB 1421, however, would require the Department to disclose Specified Records created before 2019 that it maintains in its possession, pursuant to a valid CPRA request.[2] Four reasons support this interpretation: First, application of SB 1421 to existing

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[1] All other types of peace officer personnel records besides the categories specifically referenced in Penal Code Section 832.7(b)(1)(A)-(C) – remain confidential under Penal Code Section 832.7(a), and information derived from such personnel records is subject to disclosure only pursuant to a court order granting a *Pitchess* motion brought under Evidence Code 1043, *et seq*. (See Penal Code § 832.7(g); *Pitchess v. Super. Ct.* (1974) 11 Cal.3d 531.)

[2] That is, a request which reasonably describes an identifiable record and to which no statutory basis to withhold the record applies. (Cal. Govt. Code §§ 6252(e), 6253(b); see, e.g., Pen. Code § 832.7(b)(7).)

records maintained by the Department gives effect to the plain words and purpose of the statute, and is consistent with the manner in which the CPRA itself operates. Second, applying SB 1421 to *existing* Department records does not constitute a "retroactive" application of the statute because disclosing such records does not change the legal effects of or attach new legal consequences to officers' past conduct. Third, the Legislature appears to have intended SB 1421 to allow for the disclosure of all Specified Records in an agency's possession, regardless of when they were created. Finally, contrary to LAPPL's suggestion, the Legislature has the authority to enact a statute, such as SB 1421, which modifies privacy protections it had previously granted by statute.

II. PROCEDURAL BACKGROUND

From 1978 to 2018, peace officer personnel records – including disciplinary records, records of complaints, and records of investigations of complaints – were subject to a statutory conditional confidentiality, subject to disclosure in criminal, civil or administrative actions pursuant to a noticed motion and satisfaction of a requisite showing of good cause. (Pen. Code § 832.7(a); *id.* § 832.8(a)(4)&(5); Evid. Code § 1043.) Similarly, law enforcement records regarding officer-involved shootings and serious uses of force have traditionally been treated as confidential and withheld from disclosure as records of investigation and/or official information under the CPRA. (Govt. Code §§ 6254(f) & (k); Evid. Code § 1040.) In September 2018, SB 1421 was signed into law to remove these traditional bases of confidentiality for four categories of Specified Records. SB 1421 – effective January 1, 2019 – provides, in relevant part, as follows:

> Notwithstanding subdivision (a) [of Penal Code Section 832.7], subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act . . . :
>
> (A) A record relating to the report, investigation, or findings of any of the following:
>
> (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
>
> (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public. . . . [ ]

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

(Pen. Code § 832.7(b)(1)(A)-(C).) On December 31, 2018, one day before SB 1421 was to take effect, LAPPL sought and obtained *ex parte* a court order temporarily prohibiting the City from "retroactively" enforcing SB 1421 in any manner which would result in disclosure of Specified Records regarding incidents or reflecting conduct occurring prior to January 1, 2019. (See Declaration of Soraya Kelly ("Kelly Decl.") ¶ 2 & Ex. A [12/31/18 Court Order].) The court order directed the City to brief the issue of why Specified Records pre-dating the effective date of SB 1421 are disclosable in response to CPRA requests seeking such records. (*Ibid.*)

III. ARGUMENT

A. The Plain Language of SB 1421 Supports Application To Records Created Before 2019 and Is Consistent with the Workings of the CPRA.

The objective of statutory interpretation is to ascertain legislative intent so as to effectuate the purpose of the law. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775; *Elsner v. Uveges* (2004) 34 Cal.4th 915, 927.) When interpreting the meaning of a statute, parties and courts must first look to the language of the statute, giving effect and significance to every word and phrase. (*Elsner v. Uveges*, *supra*, at p. 927; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1183; *Copley Press, Inc. v. Super. Ct.* (2006) 39 Cal.4th 1272, 1284-1285.) Words in a statute are to be given their plain, ordinary, and commonsense meaning. (*Amaral v. Cintas Corp. No. 2*, *supra*, at p. 1184; *Fredericks v. Super. Ct.* (2015) 233 Cal.App.4th 209, 224.) Statutes must be given a reasonable interpretation, with due regard for the language used and the purpose sought to accomplished. (*Fredericks v. Super. Ct.*, *supra*, at p. 224.)

SB 1421 provides that, notwithstanding the traditional statutory confidentiality protections provided under Penal Code Section 832.7(a) and Government Code Section 6254(f), respectively, certain Specified Records "maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the [CPRA]. . . ." (Penal Code § 832.7(b)(1).) The plain words of that provision underpin the proposition that any Specified Records "maintained" by the Department, regardless of when created, are no longer subject to statutory confidentiality, and are subject to disclosure pursuant to CPRA requests received after January 1, 2019.

A closer look at the wording of the statute supports this commonsense interpretation. In particular, the ordinary and commonly understood meaning of the past tense verb "maintained" is "kept possession and care of." (Deluxe Black's Law Dictionary 953 (6th Ed. 1988); see *ibid.* [defining the present tense verb "maintain" to mean "hold; hold or keep in an existing state or condition"]; Webster's Ninth New Collegiate Dictionary 718 (1988) [defining "maintain" as "to keep in an existing state"].) More specifically, to "maintain" a record means "to keep [it] in existence," or to "preserve" or "retain" it. (*Moghadam v. Regents of Univ. of Calif.* (2008) 169 Cal.App.4th 466, 479-480, quoting *Owasso Independent Sch. Dist. No. I-011 v. Falvo* (2002) 534 U.S. 426, 432-433.) By using the word "maintained" as a trigger for disclosability, the Legislature intended SB 1421 to apply to all Specified Records that an agency has kept in existence – *i.e.*, that it has preserved or retained – at the time a CPRA request is made, regardless of when such records were created. Had the Legislature intended to make some Specified Records disclosable and keep others confidential based on when the records were created or when the underlying incidents occurred, it could have expressly specified such a time limitation. (See *Fredericks v. Super. Ct.*, *supra*, 233 Cal.App.4th at p. 218 [rejecting argument that Section 6254(f)(2) of the CPRA did not require disclosure of records more than 60 days old, because the "plain terms" of the statute "do not include an express time limitation on production of only 'contemporaneous' or 'current' records"].) Because the Legislature did not do so, "[t]here is no basis in the plain language of the statute to read into it any [such temporal] limitation." (*Id.* at p. 234.)

Interpreting SB 1421 to apply to records created before 2019 is also consistent with the manner in which the CPRA operates. The mechanics of the CPRA must be taken into account when analyzing how records are to be disclosed under SB 1421, given that the statute expressly makes the CPRA the

vehicle by which Specified Records are to be made available to the public. (Pen. Code § 832.7(b)(1).) It is well-established that "the CPRA requires public agencies to provide access to their *existing records*," where no exemption to disclosure applies. (*Sander v. Super. Ct.* (2018) 26 Cal.App.5th 651, 665 [italics added]; *Bd. of Pilot Commissioners v. Super. Ct.* (2013) 218 Cal.App.4th 577, 597 ["The CPRA pertains to 'disclosable public records in the *possession* of the agency."] [italics in original].) Indeed, the definition of "public records" under the CPRA includes records that are "prepared, owned, used, or retained by" an agency. (Govt. Code § 6252(e).) Thus, in responding to a CPRA request, an agency generally must: determine if it has responsive pubic records in its possession; notify the requestor whether responsive, disclosable public records exist; and notify the requestor if any responsive records are being withheld from disclosure pursuant to an applicable exemption. (Govt. Code §§ 6253(c), 6255(a) & (b); *Haynie v. Super. Ct.* (2001) 26 Cal.4th 1061, 1072.) The CPRA does not require an agency to retain records for any particular timeframe, or to create records in response to a request; but if an agency maintains public records in its possession, they are subject to disclosure absent an applicable exemption. (*Sander v. Super. Ct.*, *supra*, 26 Cal.App.5th at p. 666; *Fredericks v. Super. Ct.*, *supra*, 233 Cal.App.4th at p. 223 [noting that "[t]he CPRA generally presumes that all documents maintained by a public entity are subject to disclosure," unless an exemption applies].)

Accordingly, both the plain language of SB 1421 and the established procedures of the CPRA support application of the statute to any Specified Record maintained by the Department, regardless of the date it was created.

B. <u>Applying SB 1421 to Require Disclosure of Records Pertaining to Pre-2019 Conduct Is Permissible.</u>

Petitioner contends that applying SB 1421 to allow for the disclosure of Specified Records relating to pre-2019 incidents would be an impermissible "retroactive" application of the statute absent an explicit statement from the Legislature that SB 1421 was intended to operate "retroactively." (LAPPL Application at pp. 1-2, 5-9.) Petitioner's argument is flawed for two reasons. <u>First</u>, applying SB 1421 to Specified Records relating to pre-2019 conduct would not constitute a true retroactive application of the statute because it would not change the legal consequences of such past conduct. (See *Elsner v. Uveges*, *supra*, 34 Cal.4th at pp. 936-939; *Tapia v. Super Ct.* (1991) 53 Cal.3d 282, 288;

Amaral v. Cintas Corp. No. 2, *supra*, 163 Cal.App.4th at pp. 1196-1199.) Second, even if such an application was somehow considered retroactive, the Court may properly find from the text, history, context, and purpose of SB 1421 that the Legislature intended to allow for the disclosure of Specified Records relating to enumerated incidents that occurred before the effective date of the statute. (See *Evangelatos v. Super. Ct.* (1988) 44 Cal.3d 1188, 1210; *Borden v. Div. of Medical Quality* (1994) 30 Cal.App.4th 874, 882.)

1. Application of SB 1421 to Specified Records Pertaining to Pre-2019 Conduct Does Not Have a Retroactive Effect.

By its plain terms, SB 1421 eliminates confidentiality protections for Specified Records that are "maintained" by agencies employing peace officers, and does not make any distinctions as to the disclosability of such records based on whether the underlying incidents occurred before or after the effective date of the statute. (See Pen. Code § 832.7(b).) Petitioner contends that applying SB 1421 to allow disclosure of existing Department records pertaining to pre-2019 incidents is an impermissible "retroactive" application of the statute. (LAPPL Application at pp. 1-2, 5-9.) In so arguing, Petitioner assumes – without analysis – that such an application of SB 1421 is retroactive, and overlooks relevant case law that sets forth the proper analytical framework for determining, in the first instance, whether a statute's application is, in fact, retroactive in its effect.

Statutes do not operate retroactively unless there is a clear indication that the Legislature intended that they do so. (*Elsner v. Uveges*, *supra*, Cal.4th at p. 937.) The dispositive issue in determining whether the application of a statute is prospective or retroactive is whether the law "changes the legal consequences of past conduct by imposing new or different liabilities based upon such conduct." (*Id.*; *Tapia v. Super. Ct.*, *supra*, 53 Cal.3d at p. 288; *Amaral v. Cintas Corp. No. 2*, *supra*, 163 Cal.App.4th at p. 1197; see also *Landgraf v. USI Film Prods.* (1994) 511 U.S. 244, 269-270 ["[T]he court must ask whether the new provision attaches new legal consequences to events completed before its enactment."].) If so, then the statute is retroactive, and its application to pre-enactment conduct is prohibited, absent a clear legislative intent to permit such retroactive application. (*Elsner v. Uveges*, *supra*, at p. 937.) If the statute does not substantially change the legal effect of past events, then it operates prospectively, and application to pre-enactment conduct is permitted without further inquiry

into legislative intent. (*Amaral v. Cintas Corp. 2*, *supra*, at p. 1197, quoting *Kizer v. Hanna* (1989) 48 Cal.3d 1, 7; see also *Elsner v. Uveges*, *supra*, at pp. 936-937.)

"A statute does not operate retroactively merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment." (*Amaral v. Cintas Corp. 2*, *supra*, 163 Cal.App.4th at p. 1198; *Kizer v. Hanna*, *supra*, 48 Cal.3d at pp. 7-8; see also *Landgraf v. USI Film Prods.*, *supra*, 511 U.S. at pp. 269-270 ["A statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment [citation] or upsets expectations based in prior law."].) Instead, the relevant question is whether the statute attaches new legal consequences to those pre-enactment events. (*Landgraf v. USI Film Prods.*, *supra*, at pp. 269-270.) Accordingly, courts have found statutes to be retroactive where applying the new law to pre-enactment conduct would expand liability for past conduct, impose broader duties than previously existed, subject persons to increased punishment for past criminal conduct, or subject persons to new punishment for past conduct that was not formerly defined as criminal. (*Californians for Disability Rights v. Mervyn's, LLC ("Mervyn's")* (2006) 39 Cal.4th 223, 231.)

Here, interpreting SB 1421 to require disclosure of Specified Records relating to peace officers' pre-2019 conduct would not have a true "retroactive effect," because the mere act of disclosing such records would not change the legal effects of or attach new legal consequences to officers' past conduct. For example, disclosing records pertaining to past uses of force or peace officer misconduct would not increase officer liability for such conduct, subject officers to new discipline for past acts, or increase discipline in any way. (*Amaral v. Cintas Corp. 2*, *supra*, 163 Cal.App.4th at p. 1198, citing *Mervyn's*, *supra*, 39 Cal.4th at p. 231 [statute at issue was not retroactive because it did not impose new or different liabilities for past conduct].) That is because SB 1421 does not change the substantive laws or rules governing peace officer conduct. (See *Mervyn's*, *supra*, at p. 232 [proposition narrowing standing requirements for unfair competition lawsuits was not retroactive as applied to cases pending before the law's enactment because it "left entirely unchanged the substantive rules governing business and competitive conduct"].)

The distinction between a prospective or retroactive application of a law was discussed in *Amaral v. Cintas Corporation No. 2,* 163 Cal. App. 4th 1157. In *Amaral*, plaintiffs sued their employer,

Cintas, for violations of a local living wage ordinance and two related provisions of the Labor Code. (*Id.* at p. 1173.) At the time the action was filed, state law gave the California Labor Commissioner sole statutory authority to assess and collect civil penalties for many Labor Code violations. (*Id.* at pp. 1173, 1195-1196.) Sometime after the lawsuit was filed, the Legislature adopted the Private Attorneys General Act ("PAGA"), which allowed aggrieved employees to collect civil penalties for Labor Code violations where the Labor Commissioner had not acted. (*Ibid.*) Plaintiffs subsequently amended their complaint to seek penalties under PAGA for Cintas's violations of those additional Labor Code provisions. (*Ibid.*) Cintas objected that PAGA's provisions could not be applied retroactively, but the trial court rejected that argument, ruling that plaintiffs could rely on PAGA to seek those penalties. (*Id.* at pp. 1195-1196.) The Court of Appeal sustained the trial court's ruling, holding that allowing plaintiffs to collect such penalties under PAGA was not a retroactive application of the statute, because the change in the law did not increase Cintas's liability given that the Labor Commissioner could have recovered the same penalties for Cintas's violations before the passage of PAGA. (*Id.* at p. 1197.) The court reasoned that PAGA merely allowed private parties to recover penalties that previously were recoverable only by the Labor Commissioner. (*Ibid.*) In other words, the statute only changed who could collect penalties for existing violations; it did not impose greater, different, or new penalties. (See *id.* at p. 1198.) Accordingly, the court held that "[i]t [did] not matter that Cintas's wrongful conduct occurred before PAGA was enacted because the legal consequences of that conduct [*i.e.*, potential liability for penalties,] remained the same." (*Id.* at p. 1197.) Thus, "[b]ecause PAGA did not increase Cintas's liability for Labor Code penalties, its application in [*Amaral*] was not retroactive." (*Ibid.*)

The California Supreme Court's decision in *California for Disability Rights v. Mervyn's*, 39 Cal.4th 223, is also instructive. In that case, plaintiff California for Disability Rights ("CDR") sued Mervyn's department store alleging that the store violated California's Unfair Competition Law ("UCL") by maintaining pathways that were too narrow for access by persons who used wheelchairs, crutches, and walkers. (*Id.* at p. 227.) After a trial, judgment was entered for Mervyn's and CDR appealed. (*Ibid.*) While CDR's appeal was pending, a new proposition was enacted that limited a private party's right to sue under the UCL only to circumstances where he or she had suffered an injury in fact and had lost money or property as a result of the unfair competition. (*Ibid.*) Because CDR had

not claimed to have suffered any such harm, Mervyn's moved to dismiss the appeal, arguing that the new law eliminated CDR's standing to continue the case. (*Id.* at pp. 227-228.) CDR argued that applying the new law to cases initiated before its enactment would have an impermissible retroactive effect. (*Id.* at p. 230.) Mervyn's maintained that the new law was not retroactive because its application did not change the legal consequences of past conduct by imposing new or different liabilities based upon such conduct. (*Ibid.*) The Supreme Court agreed with Mervyn's, finding that application of the new law to deprive CDR of standing did not impose new or different liabilities based on pre-enactment conduct, because "[n]othing a business might lawfully do before [the law was enacted] is unlawful now, and nothing earlier forbidden is now permitted." (*Id.* at p. 232.) Similarly, SB 1421 only requires the disclosure of Specified Records in the Department's possession at the time that a CPRA request is made. It does not make unlawful or punishable any peace officer conduct that was previously allowed, nor does it permit any conduct that was previously forbidden.

Thus, while it may be useful shorthand to refer to the application of SB 1421 to records pertaining to pre-2019 incidents as "retroactive," in reality, "it is a misnomer to designate [the statute] as having retrospective effect." (*Tapia v. Super Ct.*, *supra*, 53 Cal.3d at p. 288.) The fact that a post-enactment CPRA request may seek records pertaining to pre-2019 conduct would not render the statute retroactive, because disclosure of such records would not change the legal consequences of pre-enactment incidents. Therefore, the Court should find that application of SB 1421 to records of pre-2019 conduct is permitted without inquiring further into the legislative history or purpose behind the statute.

2. Even if Application of SB 1421 to Records of Pre-Enactment Conduct Could Be Considered "Retroactive," The Legislature Intended Such An Application.

To the extent applying SB 1421 to records relating to pre-2019 conduct could somehow be considered a retroactive application of the law, such an application would nevertheless be permissible. Even in the absence of an express declaration of retroactivity, a statute may still be applied retroactively if it is clear from its text, history, and other extrinsic sources that the legislature intended such an application. (*Evangelatos v. Super. Ct.*, *supra*, 44 Cal.3d at p. 1210; *Borden v. Div. of Medical Quality*, *supra*, 30 Cal.App.4th at p. 882 ["[A] court may look to a variety of other factors to determine such legislative intent. . . ."]; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86

Cal.App.4th 534, 549-550.) Here, although the Legislature did not use the magic word "retroactive" when it enacted SB 1421, there are clear indications in both the text and legislative history of the statute that the Legislature plainly intended to make available to the public records of pre-enactment conduct. (See *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 843 [explaining that "no talismanic word or phrase is required to establish retroactivity"].)

As discussed in Section III.A, above, the plain language of Penal Code Section 832.7(b)(1) clearly indicates that the Legislature intended to make available for public disclosure Specified Records that are "maintained" by a law enforcement agency, without regard to when such records were created. Had the Legislature intended to shield from disclosure records pertaining to pre-enactment conduct, it could have included language in SB 1421 to create temporal limitations or otherwise distinguish between pre-enactment and post-enactment records. Indeed, the Legislature carefully carved out the four categories of Specified Records that are subject to public disclosure, distinguishing those from all other types of personnel records, which remain confidential and subject to limited disclosure pursuant to the *Pitchess* process. (See Pen. Code § 832.7(b)(1)(A)-(C); cf. *id.* §§ 832.7(a) & (h).) Similarly, the Legislature included in SB 1421 a schedule of temporal limitations allowing for the temporary withholding of records relating to officer-involved shootings and uses of force, depending on various circumstances. (See *id.* § 832.7(b)(7)(A)-(C).) Because the Legislature did not make any comparable distinctions or limitations differentiating pre-enactment and post-enactment records, the Court can interpret its failure to do so as an intentional decision that no such distinction was intended. (See *Fredericks v. Super. Ct.*, *supra*, 233 Cal. App. 4th at p. 218 [rejecting argument that a provision of the CPRA did not require disclosure of older records, where the plain text of the provision did not contain any such temporal limitation].)

The legislative history of SB 1421 also contains clear indications that the Legislature intended the statute to apply to Specified Records relating to pre-2019 conduct. For example, the legislative history reflects that the Legislature understood that law enforcement agencies are required by law to retain records relating to complaints against officers for a minimum of five years. (See Declaration of Richard Levine ("Levine Decl."), Ex. A at p. 4.) This history also indicates that the Legislature understood that the "[e]ffect of [t]his [b]ill" was to "open[] police officer personnel records . . . allowing

local law enforcement agencies . . . to provide greater transparency around only the most serious police complaints." (*Id.* at p. 8; *id.*, Ex. D at p. 7.) Thus, the intended effect of SB 1421 was to throw "open" to the public records maintained by law enforcement agencies that previously had been closed, by removing the statutory confidentiality protections previously bestowed upon such records. (See Deluxe Black's Law Dictionary 1089 (6th Ed. 1988)[defining "open" to mean "to render accessible, visible, or available; to submit or subject to examination, inquiry, or review, by the removal of restrictions or impediments"].)

The legislative history also shows that the Legislature received early opposition to SB 1421 – in advance of a hearing on April 17, 2018 – on the grounds that application of the statute to records of pre-enactment conduct would have a retroactive impact. (See Levine Decl., Ex. A at pp. 1, 16 [noting that a peace officer association's reading of SB 1421 is that the law "is retroactive in its impact" because "records are available for public inspection irrespective of whether or not they [sic] occurred prior to the effective date of SB 1421"].) However, the Legislature did not amend the operative language of Section 832.7(b)(1) after having received such opposition to the April 2, 2018 version of SB 1421. (Compare *id.* at p. 1 and Kelly Decl., Ex. B [Text of SB 1421 as amended on 04/02/2018], with LAPPL Petition, Ex. A at p. 2 [Text of SB 1421 as signed into law on 09/30/2018].) Its failure to do so indicates the Legislature's intent that the statute allow for the disclosure of pre-enactment Specified Records maintained by an agency, regardless of whether such application might have a retroactive impact.

The text, history, and purpose of SB 1421 all contain strong indications that the Legislature intended the statute to apply to records relating to pre-enactment conduct, whether such an application might be deemed "prospective" or "retroactive." To limit SB 1421 to records relating to post-2019 incidents would thwart the Legislature's stated intent to "open" up peace officer personnel records and provide transparency regarding incidents of serious police misconduct, officer-involved shootings, and serious uses of force. Practically speaking, if SB 1421 were read to apply only to records about conduct occurring on or after January 1, 2019, no law enforcement agency in the state would currently have any records to disclose, because any relevant incidents (if any) that may have occurred in the last three weeks may have yet to be discovered or investigated, let alone sustained. Such a result appears at odds with the Legislature's stated purpose in enacting SB 1421.

C. The Legislature Has Authority to Modify or Rescind Previously-Granted Statutory Confidentiality Protections.

LAPPL also suggests that the Legislature lacks the authority to modify Penal Code Section 832.7 to partially rescind conditional privacy protections previously granted over peace officer personnel records because the protections afforded under the old statutory scheme are explicitly recognized in the California Constitution. (See LAPPL Application at pp. 1-2, 4-5.) However, as LAPPL itself acknowledges, those conditional privacy protections afforded by Section 832.7(a) were "established by statute." (*Id.* at pp. 1-2, 6.) Because such protections are a creature of statute, they are neither "vested" nor constitutional in nature, and are thus subject to modification or revocation, even retroactively, by legislative action. (See *Plotkin v. Sajahtera, Inc.* (2003) 106 Cal.App.4th 953, 962-963.) Even if the former version of Section 832.7 created a vested right to privacy in pre-enactment records, it is settled that "[v]ested rights are not immutable; the state, exercising its police power, may impair such rights when considered reasonably necessary to protect the health, safety, morals and general welfare of the people." (*Id.* at 964.) The Legislature thus has the authority to rescind even vested rights when doing so is necessary to serve an important state interest. (See *Graczyk v. Workers Comp. Appeals Bd.* (1986) 184 Cal. App. 3d 997, 1008.)

Likewise, "it is for the Legislature to weigh the competing policy considerations" that are encapsulated in Section 832.7, and it is squarely within the Legislature's discretion to decide whether or not "confidentiality in police personnel matters [ ] outweigh[s] the public interest in openness." (*Copley Press, Inc. v. Super. Ct., supra*, 39 Cal.4th at pp. 1298-1299 & n.22, quoting *Hemet v. Super. Ct.* (1995) 37 Cal. App. 4th 1411, 1428 n. 18 [noting that if former Section 832.7 did not exist, "it is far from clear that courts considering CPRA requests [for peace officer personnel records] would [have] reach[ed] the same conclusion" as the Legislature regarding the balance of interests].) Accordingly, the Legislature had the authority to enact SB 1421 and was entitled to reach a different conclusion than it previously had regarding the confidentiality of certain types of peace officer personnel records and the manner in which they may be disclosed.

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IV. CONCLUSION

For all the foregoing reasons, Petitioner's request for permanent writ relief should be denied.

Dated: January 17, 2019

MICHAEL N. FEUER, City Attorney
CARLOS DE LA GUERRA, Mng. Asst. City Attorney
JULIE RAFFISH, Assistant City Attorney
SORAYA C. KELLY, Deputy City Attorney

By: _____
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, declare: I am employed in the County of Los Angeles. I am over the age of 18 and not a party to this action or proceeding. My business address is Los Angeles City Attorney's Office, Public Safety General Counsel Division, 200 North Main Street, 800 City Hall East, Los Angeles, CA. 90012.

On January 18, 2019, I served the document(s) described as **CITY OF LOS ANGELES AND CHIEF MOORE'S OPPOSITION TO PETITIONER LOS ANGELES POLICE PROTECTIVE LEAGUE'S PETITION FOR WRIT OF MANDATE; ALTERNATIVE WRIT OF MANDATE; AND REQUEST FOR STAY ORDER** in Los Angeles Superior Court Case No. 18STCP03495 on all interested parties in this action by hand-delivering true copies thereof addressed as follows:

Richard A. Levine
Rains Lucia Stern St. Phalle & Silver, PC
1428 2nd Street, Suite 200
Santa Monica, CA 90401
rlevine@rlslawyers.com

[ ] BY MAIL: I am readily familiar with the practice of the Los Angeles City Attorney's Office for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is placed for collection and mailing. On the date referenced above, I placed a true copy of the above document(s) in a sealed envelope and placed it for collection in the proper place in our office at Los Angeles, California.

[ ] BY PERSONAL SERVICE: I delivered by hand the above-described document in person to the recipient specified above with deliver time at or before 8:30 a.m. on the date specified.

[X] BY ELECTRONIC MAIL: I transmitted the document(s) to the addressee(s) via electronic mail from and to the addresses listed above.

[X] BY OVERNIGHT COURIER: I placed a true copy of the above document(s) in a sealed, authorized envelope and deposited the envelope in a regularly maintained overnight courier parcel receptacle prior to the time scheduled for pick, up with delivery fees paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 18, 2019

LANCE PORTER, Declarant